

REMARKS

Claims 26-53 are pending in the present application.

At the outset, Applicants wish to thank Examiner Mertz for the helpful and courteous discussion with their undersigned Representative on February 14, 2006. During this discussion, several amendments and arguments were discussed to address the outstanding Office Action. Reconsideration of the outstanding rejections is requested in view of the amendments and arguments herein.

The rejection of Claim 26 under 35 U.S.C. §112, first paragraph (enablement), is obviated by amendment.

In regard to H2-8 hybridoma recited in Claims 26 and 37, Applicants submit that they have deposited this strain under the terms of the Budapest Treaty as evidenced by the deposit receipt dated October 21, 1999 (a copy of which are **appended herewith** for the Examiner's convenience). Applicants further state that all restrictions imposed by the depositor on the availability to the public of the deposited biological material will be irrevocably removed upon granting of a patent on this application.

Accordingly, the enablement requirements of 35 U.S.C. § 112, first paragraph, have been fulfilled, and as such this ground of rejection should be withdrawn.

The rejections of: (a) Claims 26, 28-36, 37, 39-49 under 35 U.S.C. §112, first paragraph (written description), based on the phrase "or a derivative thereof;" (b) Claims 26-49 under 35 U.S.C. §112, first paragraph (enablement), based on the phrase "or a derivative thereof;" and (c) Claims 26-49 under 35 U.S.C. §112, first paragraph (enablement), based on

the phrase “capable of,” are obviated by amendment, while the rejection under 35 U.S.C. §112, first paragraph (enablement), based on the phrase “conservative mutation” is respectfully traversed.

At the outset, the phrase “capable of binding” has been replaced with “binds.” As such, the criticism of this term is now believed to be moot. Second, with respect to the phrase “or a derivative thereof,” Applicants have amended the claims to define a homolog of SEQ ID NOs: 2 and 4 as being a sequence containing “one conservative mutation” that binds to the IL-2 β chain or the monoclonal antibodies produced by H2-8 hybridoma. Applicants submit that this amendment is fully supported, described, and enabled by the specification at pages 12-14 and the Examples.

Further, Applicants submit that based on the description provided on pages 12-14, as well as the Examples, one of skill in the art would be able to readily make a single conservative amino acid modification to the sequence of SEQ ID NO: 2 or 4 and to assess its ability to bind to the IL-2 β chain or the monoclonal antibodies produced by H2-8 hybridoma. As the Examiner will note, the amino acid sequence of SEQ ID NOs: 2 and 4 are 31 and 30 amino acids respectively. Therefore, a mutation of a single amino acid in these sequences would result in an identity of 96.8% and 96.7%, respectively. The Office has already taken the position that sequences having greater than 95% homology to the described and claimed sequence are well within the purview of the skilled artisan and are fully enabled in a similar disclosure to the present application (see *Ex parte Bandman* or, for example, U.S. 6,929,791).

Accordingly, withdrawal of these grounds of rejection is requested.

The rejections of: (a) Claims 26-28 and 37-39 under 35 U.S.C. §102(b) over Taniguchi et al, and (b) Claims 29-36 and 40-49 under 35 U.S.C. §103(a) over Taniguchi et al, are obviated by amendment.

This ground of rejection was based on the broad interpretation of the term “has” to be the equivalent of “comprising.” Thus, the disclosure by Taniguchi et al of a longer sequence that happens to include that of SEQ ID NOs: 2 and 4 was taken to anticipate the claimed invention. Applicants note that the claims have been amended to define the sequence as “consisting of” that of SEQ ID NOs: 2 and 4, therefore, the full-length sequence of Taniguchi et al is now precluded. Since Taniguchi et al fail to disclose or suggest the specifically claimed fragments, this reference does not anticipate or render obvious the present invention.

Withdrawal of these grounds of rejection is requested.

The rejections of Claims 26-49 under 35 U.S.C. §112, second paragraph, is obviated by amendment.

Applicants have amended the claims to address the Examiner’s specific points of criticism. In particular, “has” or “having” have been replaced with “consisting of,” the claims have been corrected to ensure proper antecedent basis is present, and the misspelled term “homologous” has been corrected.

Withdrawal of this ground of rejection is requested.

The objection to the title is obviated by the amendment herein. In accordance with the Examiner’s suggestion, the title of the present application has been amended to “Peptides of IL-2.” Withdrawal of this ground of objection is requested.

The obviousness-type double patenting rejection of Claims 26-49 over Claims 3-10 of US 6,825,334, is obviated by submission of an executed Terminal Disclaimer.

Applicants submit herewith a Terminal Disclaimer in compliance with 37 C.F.R. §1.321(c), disclaiming the terminal part of any patent granted on the above-captioned application, which would extend beyond the expiration date of the full statutory term as presently shortened by any terminal disclaimer of US 6,825,334. Accordingly, Applicants believe that this ground of rejection is no longer at issue and should be withdrawn. Acknowledgement to this effect is requested.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon



Vincent K. Shier, Ph.D.
Registration No. 50,552

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/03)